"regular treatment with one of her instruments would probably help the child very considerably."

Our records show that Dr. ————, a graduate of the Los Angeles College of Chiropractice, December 21, 1926, is licensed by the Board of Chiropractic Examiners to practice "chiropractic." So far as we know, she has no medical training. Our records indicate that for the past three or four years she has been operating the "———— Laboratory of Radiotherapy—Home of the Homo-Vibra Ray, ————, Los Angeles." She is said to operate "a sort of laboratory and clinic," using the "homo-vibra ray" (whatever that may be) and other so-called radio modalities, one of which is known as the "———— Short Wave Outfit," which assertedly diagnoses and treats all diseases.

One informant reported at our Los Angeles office September 30, 1938, that she consulted ————, "who she says is diagnosing and treating by radio. The patient puts a drop of blood on a piece of blotting paper and sends it to Mrs. ————, who makes her diagnosis from this specimen."

Our informant related that "One patient, who is in the East some place, sent a drop of blood and ———— diagnosed this case as broken ribs, the fourth and fifth ribs."

The last-mentioned report indicates the possibility that ———— is using an electrical appliance similar to that of the old Abrams electronic machine (also called an oscilloclast), a totally unscientific apparatus, which was the subject of an article printed in the *Journal of the American Medical Association,* September 20, 1924, page 939; also in the *Scientific American,* October, 1923, issue.

Very truly yours,

C. B. PINKHAM, M. D.,
Secretary-Treasurer.

Subject: American Physicians' Art Association.

San Francisco, February 10, 1939.

To the Editor:—The American Physicians' Art Association, composed of over seven hundred physicians throughout the country who have become proficient in all kinds of art work as an avocation, will conduct their second art exhibit at the City Art Museum of St. Louis next May during the convention of the American Medical Association.

In order to bring this matter to the attention of thousands of your subscribers, we are hoping that you may arrange to publish the notice below in an early issue of your noted and valued journal. Please notice that the *Journal of the American Medical Association* has already published such a notice in their issue of February 4, 1939, Vol. 112, No. 5, page 456.

Thanking you in advance for such a courtesy and hoping you may be able to send us a copy of the issue that may contain such a notice, I beg to remain

521 Flood Building.

Respectfully yours,

FRANCIS H. REDEWILL, M. D.,
President.

"The American Physicians' Art Association, composed of members in the United States, Canada, and Hawaii, will hold its second Art Exhibit in the City Art Museum of St. Louis, May 14 to 20, 1939, during the annual session of the American Medical Association. Art pieces will be accepted for this art show in the following classifications: (1) oils, both (a) portrait and (b) landscape; (2) water colors; (3) sculpture; (4) photographic art; (5) etchings; (6) ceramics; (7) pastels; (8) charcoal drawings; (9) book-binding; (10) wood carving; (11) metal work (jewelry). Practically all pieces sent in will be accepted. There will be over sixty valuable prize awards. For details of membership in this Association and rules of the Exhibit, kindly write to Max Thorek, M. D., Secretary, 850 Irving Park Boulevard, Chicago, Illinois, or F. H. Redewill, M. D., President, 521-536 Flood Building, San Francisco."

MEDICAL JURISPRUDENCE †

By HARTLEY F. PEART, ESQ.
San Francisco

OPERATIONS UPON PERSONS LEGALLY INCOMPETENT TO CONSENT TO SAME

It is a general rule of law that a physician or surgeon cannot operate upon a person without his express or implied consent, or if the person to be operated upon is legally incapable of consenting, then without the express or implied consent of one legally competent to consent for him.

Two classes of persons who are, by law, incompetent to give consent are minors and mentally incompetent adults. Consent to operate upon such persons must be obtained from the person duly appointed to act as guardian, or in the case of minors with living parents, from the parents, since they are, in point of law, natural guardians of their children. In early days, another class was recognized, namely, wives. Consent of the husband was necessary then, due to the fact that the wife and husband were considered as one entity, and the husband had the sole right to contract for anything affecting that entity. Today the laws of this and most other states grant to a wife equal rights in regard to binding oneself by contract, and apparently to consenting to surgical operations.

Since two elements, implied consent and emergency, are constantly used to create exceptions to the general rule requiring consent, one can only reach a conclusion as to what a court may do in a particular instance by reviewing decisions handed down in the past.

Typical instances of the application of the general rule are the following:

In *Zoski* vs. *Gaines,* 271 Mich. 1, 260 N. W. 100, defendant physician removed the tonsils of a nine-year-old boy without consent of his parents and at a time when no emergency existed. Defendant was held liable to the boy's parents.

In *Moss* vs. *Risworth,* 222 S. W. 225, a physician was held liable for a similar operation upon an eleven-year-old child although he was accompanied by an adult sister.

And in *Pratt* vs. *Davis,* 224 Ill. 300, 79 N. E. 562, 7 L. R. A. (N. S.) 609, it was held that consent by a man to an operation upon his insane wife for the removal of her uterus and ovaries is not shown by the fact that, after an operation of a minor nature to which he consented, which did not prove successful, he complied with a direction to bring his wife again to the surgeon for treatment.

Evidencing judicial treatment of the question of implied consent, the following cases are enlightening:

In *Theodore* vs. *Ellis,* 141 La. 709, 75 So. 655, the decision in favor of a patient who lost forever his manhood powers by reason of the unnecessary performance of an operation, was based largely upon the ground that he would not have consented if the doctor had informed him concerning, or prescribed, as he failed to do, a well-recognized remedy which might have afforded the desired relief.

In *Van Meter* vs. *Crews,* 149 Ky. 335, 148 S. W. 40, it was held that the conclusion would have been warranted that there was an understanding that the surgeon might operate if he found it necessary to do so, the matter having been talked over with relatives at the hospital as well as with the patient herself.

In *Bakker* vs. *Welsh,* 144 Mich. 632, 108 N. W. 94, 7 L. R. A. (N. S.) 612, it was held that a father could not

† Editor's Note.—This department of CALIFORNIA AND WESTERN MEDICINE, presenting copy submitted by Hartley F. Peart, Esq., will contain excerpts from and syllabi of recent decisions and analyses of legal points and procedures of interest to the profession.

complain because his express consent had not been procured for an operation on his seventeen-year-old son for a tumor, where the operation was not of a very dangerous character and there was nothing to indicate to the doctors, before proceeding to operate, that the father did not approve of his son's going with his aunt and adult sisters to consult one of the doctors and following his advice.

Thus it can be seen that, although a physician is allowed to proceed when the words or actions of the patient or guardian imply acquiescence, the physician should always obtain a commitment more definite than a mere retained for examination and treatment.

Emergency, the other element granting to physicians a certain amount of freedom to act as he thinks best, is usually a proper defense if actually present.

In *Luka* vs. *Lowrie,* 136 N. W. 1106, 41 L. R. A. (N. S.) 290, a fifteen-year-old boy had his foot crushed by a train. Hospital physicians thought amputation necessary before the parents, who lived across town, could be reached. The court held that their consent was not necessary due to the existing emergency.

In *Jackovach* vs. *Yocum,* 237 N. W. 444, plaintiff, a boy of eighteen years, fell off a train, suffering a severe gash in the head and a mangled arm. While under an anesthetic given to enable the gash to be sewn up, the surgeons concluded that amputation of the arm would soon be necessary and made amputation immediately to avoid a second shock to the boy's system, which would necessarily occur if ether should be given to him again. It was held that the danger to the boy's life, created by the emergency, was a defense.

However, in *Franklyn* vs. *Peabody,* 249 Mich. 363, 228 N. W. 681, it was held that the unauthorized removal of fascia or membranous tissue from the thigh of a patient, in order to afford sheathing for the tendons of his finger, which were found to be adhered together, could not be justified upon the theory of an emergency, since the primary operation on the patient's stiff finger was in no sense a major one; and in *Mohr* vs. *Williams,* 95 Minn. 261, 104 N. W. 12, 1 L. R. A. (N. S.) 439, it was held that no emergency existed such as would justify operating without the patient's consent, nor was implied consent shown where only one ear had troubled the patient and the surgeon had given assurance that the other was in good condition, but, when about to operate on the one which troubled the patient, the surgeon discovered that it did not require an operation, and then immediately proceeded to operate upon the other, which he found to be in bad shape, no objection being made by the patient's family physician, who was present.

It should be stated that the courts have sometimes made a distinction where the patient is a minor and old enough to be capable of understanding. For instance, in *Bishop* vs. *Shurly,* 237 Mich. 76, 211 N. W. 75, a nineteen-year-old fatherless boy was taken by his mother to a physician's office for examination. The physician recommending a tonsillectomy, the mother specified a general anesthetic. At the time of the operation the boy requested a local anesthetic, which was given without the mother's knowledge. He died on the operating table. The Court held that the physician was not liable and stated that a nineteen-year-old boy may contract for necessities without parental consent. This was a Michigan case and, although it probably would be followed in California, too much reliance should not be placed upon it. The *Bakker* case, referred to earlier, is also interesting in this regard.

From the foregoing cases and from other decisions examined, the following conclusions may be drawn:

1. If no emergency exists and if the patient is a child under the age of sixteen (this is not an arbitrary age limit), it is absolutely necessary for the physician to secure consent of the child's parent or guardian before undertaking a major or minor surgical procedure. Failure to obtain consent will render the physician liable for assault and battery.

2. If the patient is under the age of 21, but over 16 or 17, a minor surgical operation may be performed without the express consent of the patient's parent or guardian even though no emergency exists. The cases supporting this rule are of such a nature that it is recommended that caution be used by all physicians.

3. If an emergency exists and it is necessary to resort to emergency or minor surgery in order to save the patient's life, the physician may safely proceed without first obtaining the consent of the patient's parent or guardian even though the patient is a child of tender years. This rule, however, is restricted to extreme cases. In other words, the emergency must be a real one.

4. The law makes no distinction between major and minor surgery except where minor surgery is employed upon a boy or girl seventeen years of age or over.

5. In the case of insane persons, a physician should always procure consent from the guardian, unless there is an acute emergency.

SPECIAL ARTICLES

INDEX

1. *Report of Los Angeles County Grand Jury: Los Angeles County Hospital, Alameda County Institutions Commission.*
2. *Report of Surgeon-General of United States Public Health Service.*
3. *Proposed Public Health Legislation for California.*
4. *California Physicians' Service: Questions and Answers.*
5. *Twenty-five Years Ago.*
6. *California Board of Medical Examiners.*

LOS ANGELES COUNTY HOSPITAL:* ALAMEDA INSTITUTIONS COMMISSION†

(COPY)

Report of the Charities and Health Committee of the 1938 Grand Jury of Los Angeles County

To the Foreman and Members of the 1938 Grand Jury:

The members of this committee consist of the following: William W. Nuzum (chairman), Harvey S. Black, Charles G. Van Hook, Mrs. Sarah Frank, Mrs. Mary Ethel Robb, William Arthur Tucker, Mrs. Pauline Case.

Among the various duties assigned to this committee was an inspection and a study of the various county departments commonly charged with the administration of charities and health functions. Pursuant to that delegation of authority, your committee has made a tour of inspection of the Olive View Sanatorium, the Los Angeles County General Hospital and the Rancho Los Amigos County Farm. Various items of relative importance were noted and comments made to the heads responsible for the respective departments, with a view of improving conditions where such improvement was, in the opinion of your committee, necessary or desirable.

ADMITTING DEPARTMENT OF THE LOS ANGELES COUNTY HOSPITAL

Particular attention was given to the conditions at the Los Angeles County General Hospital. It was noted, among

* For articles and comments on the Los Angeles County Hospital and Institutions Commissions, see CALIFORNIA AND WESTERN MEDICINE in following issues: February, 1938, page 73; February, 1938, page 97; March, 1938, page 156; March, 1938, page 216; March, 1938, page 225; April, 1938, page 300, and May, 1938, page 383.

† For references to the Alameda Plan and Institutions Commission, see following issues: October, 1931, page 315; October, 1931, page 331; November, 1932, page 324; November, 1932, page 330; November, 1932, page 354; July, 1933, page 1; November, 1933, page 340; and June, 1938, page 395.